

EXHIBIT 34

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

-----x

DARRYL CHALMERS, DARREN CONNORS,
GLENN MENDEZ, JAMES NOVA, and
FATIMA Q. ROSEMOND,

1:20-cv-03389

On behalf of themselves and all
others similarly situated, and
AFSCME DISTRICT COUNCIL 37
LOCAL 2507, on behalf of its
Members

Plaintiffs,

v.

CITY OF NEW YORK,

Defendant.

-----x

April 30, 2021
10:13 a.m.

DEPOSITION of CITY OF NEW YORK, the
Defendant herein, by SHARON NOREEN NEILL, taken by
the attorneys for the Plaintiffs, pursuant to
Notice, held via Web conference at the above date
and time, before Maureen McCormick, a Notary
Public of the State of New York.

1 S. Neill

2 a lot of other operational changes that are
3 happening within the agency, so we're not really
4 quite there.

5 Q. It sounds like it was a large change
6 management project that you oversaw for several
7 years; is that correct?

8 A. Yes.

9 Q. And it also sounds like you were very
10 proactive in doing internal analyses, and then
11 going to -- I assume that some of this work that
12 you're describing had to be done in tandem with
13 DCAS and OMB and OLR --

14 A. Yes.

15 Q. -- so you had to seek out their
16 cooperation to change the titles to address the
17 career path that you wanted, for example.

18 A. Yes, and the first step was to get the
19 charter amended.

20 Q. And I want to talk about that, too.

21 I saw in the documents your testimony
22 and efforts related to that. I just want to be
23 clear about how these processes began.

24 It wasn't as if DCAS or OMB came to
25 you and said, we want you to raise the salaries

1 S. Neill

2 and improve recruitment of the inspector titles in
3 the Department of Buildings. The Department of
4 Buildings did its own internal analysis, and then
5 advocated for what it needed with amendments to
6 the charter and working with OMB and OLR and DCAS
7 to get modifications that better suited the needs
8 of the Department of Buildings; is that correct?

9 MS. HADAGHIAN: Objection to form.

10 You can answer, if you understand, Ms.
11 Neill.

12 A. Can you restate it, Ellen?

13 Q. Sure.

14 I'm just trying to understand the flow
15 of what triggered this change management project.
16 So it was your -- it was the Department of
17 Buildings doing some internal assessment of its
18 needs going to OMB, not vice versa, correct?

19 A. So let me restate it.

20 The agency was charged to implement a
21 mayoral initiative, which was Building One City,
22 to improve its responsiveness and presence in the
23 construction industry, which was booming at the
24 time, which we were accountable to meet these
25 targets that we were charged to accomplish.

1 S. Neill

2 As a result of us having some
3 experience of pushed experience for the first half
4 of the fiscal year, were seeing that we were
5 missing those targets in hiring and retention, and
6 that prompted us to then come back and say we
7 want -- we want to increase our inspectorial
8 range, but we're having these challenges, and we
9 are going to lay out ways to try and address how
10 to overcome these challenges in the inspectorial
11 position job -- you know, in the -- I'm sorry --
12 in the -- in the way that we needed more resources
13 for recruitment, we needed -- we needed to address
14 creating the career ladder, we needed to increase
15 our candidate pool, and then internally, we had
16 this change management where we needed to change
17 our business processes for recruiting and to bring
18 in in a more structured way the inspector units to
19 help actively participate in the recruitment
20 efforts, and that was then outlined to change the
21 job titles and our request to also change
22 salaries.

23 Q. It sounds like your effort in the
24 Department of Buildings for inspector titles was
25 pretty centralized underneath you; is that

1 S. Neill

2 email?

3 A. Yes.

4 Q. Could you tell me why?

5 A. So as I previously mentioned, the
6 department was given a significant amount of new
7 resources that we were expected to hire to
8 increase our work force to meet workload and
9 service level demands in the agency, and this was
10 a conversation with oversight agencies to discuss
11 what some of those challenges were and what our
12 agency was proposing to implement strategies to
13 improve recruitment and retention.

14 Q. And I'm going to show you the next two
15 exhibits, which I believe to be the attachment to
16 this email. Do you see in this line it says,
17 "Attachment"?

18 A. Yes.

19 Q. So do you now see Exhibit 3 on your
20 screen?

21 A. Yes.

22 Q. To the best of your knowledge, is this
23 the attachment to Exhibit 2?

24 A. Yes.

25 Q. And can you tell me what this document

1 S. Neill

2 is?

3 A. This would have been to guide a
4 discussion about what the current min-maxs are
5 for the titles that we were having difficulty
6 hiring in and what we were requesting to be
7 considered for changes in those min-max rates with
8 oversight agencies.

9 Q. When you say min-max, what do you mean
10 by that?

11 A. So we typically look at the salary
12 schedule. The min-max rate is what is the
13 collective bargaining agreement, the minimum
14 salaries for a particular title and title codes
15 where we are not to hire below that rate according
16 to the collective bargaining agreement, and there
17 are non-city incumbents and then city incumbents,
18 so if you hire somebody at the non-city incumbent,
19 then they're able to move up either after a year
20 or two years to the next minimum hiring rate, and
21 then there is a maximum of the rate for the title.

22 So again, this -- this was basically
23 just a conversation in 2016 after we were looking
24 to fill the positions that we were funded for, and
25 we had experience seeing what our ability to hire

1 S. Neill

2 was and us trying to become more competitive with
3 hiring qualified candidates and us seeing that we
4 had an issue with keeping people, the retention
5 discussion was, is there a career ladder, and are
6 we -- how can we exercise the range of the salary
7 table.

8 Q. Is the salary table or salary schedule
9 the same as the minimum and maximum in the
10 collective bargaining agreement?

11 A. Yes.

12 The only difference, I think that this
13 wouldn't show, or maybe the -- or the collective
14 bargaining agreement may not show is what are paid
15 by the union for like longevity. These are like
16 the base salaries. They're not anything that are
17 given to, like -- like increments to gross.

18 Those -- we would never look at those,
19 because they're contingent upon what is part of
20 the union agreement, not necessarily like what the
21 salary is. Those are considered additions to base
22 salary.

23 Q. So at this time in 2016, were the
24 inspector titles for new hires paying at the
25 current hiring rate or were they at a different

1 S. Neill

2 rate?

3 A. We were using -- I believe at that
4 time the -- we were using the incumbent rate, and
5 maybe we may have been doing a little bit above
6 the incumbent rate at that time.

7 Q. For new hires?

8 A. For new hires.

9 Q. And why?

10 A. I think it was a matter of like the
11 current inspectors in the agency were probably
12 making a little bit above the incumbent rate, so
13 when we -- it was a practice that was occurring a
14 bit before I came, I believe. I can't necessarily
15 validate that, but we -- we were not able to be
16 competitive to hire at the -- at the minimum
17 hiring rate. We just were not able to get
18 qualified candidates.

19 Q. I'm going to scroll down to the third
20 page of this exhibit. It looks like this is some
21 kind of a market analysis.

22 Can you tell me what Page 3 is?

23 A. So this would have been -- because at
24 the time we were also trying to hire in the
25 technical titles that I mentioned to you, which

1 S. Neill

2 also are professional white collar titles of
3 engineers and architects.

4 We were concerned that we were going
5 to have a difficult time recruiting folks that we
6 referred to as technical titles for engineers and
7 architect positions to do plan examinations, so
8 part of the discussion was also reviewing whether
9 or not there was an opportunity to consider
10 changing the hiring rates for these hard to
11 recruit titles, as well.

12 So this was just a look to see,
13 because again, we typically are competing directly
14 with the -- with the private sector market for
15 engineers and architects, and this isn't unique to
16 the Department of Buildings. This is -- I'm sure
17 many agencies would make that case.

18 What ended up happening subsequent to
19 this discussion was, is that we found that we
20 ended up trying to hire more entry-level staff in
21 these titles to see if it would work, and we found
22 that we didn't have as much of a recruitment issue
23 or retention issue once we did hire people in
24 these titles, so I don't believe -- the focus then
25 became more on inspectors than these titles.

1 S. Neill

2 Q. Now, I'm going to show you Exhibit 4.
3 I think this is also an attachment to Exhibit 2,
4 that first email. Do you agree?

5 A. Yes.

6 Q. What is this Exhibit 4?

7 A. So these would have just been what the
8 guiding discussion was for the meeting, was to
9 kind of outline that we were asking if we were
10 able to modify the civil service classification
11 for inspectors and for the technical titles as
12 well as the salary structures to increase the
13 staffing and career opportunities that were
14 performing these functions, so this basically
15 outlines the issues that I already mentioned,
16 which was that we were being asked to hire a
17 significant number of new employees, and that we
18 were looking to improve our retention and
19 recruitment, and that in the technical titles
20 many, many of the managers that oversaw the
21 technical work that's being done in the agency
22 were often reluctant to hire engineers and
23 architects that were at different levels in the
24 past.

25 They -- many of them only wanted to

1 S. Neill

2 hire licensed or registered -- licensed engineers
3 or registered architects, which made the hiring
4 even more difficult, and we ended up looking at
5 different ways to hire at different levels for the
6 technical titles.

7 We were not really able to do that in
8 the inspectorial titles, because we felt that the
9 apprentice title wasn't really going to meet the
10 needs of the agency, so that then started the
11 discussion about the civil service classification
12 issues that we were having with the inspectorial
13 titles.

14 Q. So it seems like you met on January
15 20. Do you remember that meeting?

16 A. Yeah.

17 Q. Do you remember any outcomes?

18 A. I think it was to kind of formulate
19 like what the steps were that we needed to take.

20 I felt -- I think we were feeling at
21 the time the priority was to meet our hiring
22 target, so a lot of the discussion was about how
23 to increase our hiring pools, which was a
24 discussion about what the options were with the
25 entry-level inspector title. We felt that

1 S. Neill

2 what the pros and cons were for having separate
3 titles or levels within titles and what our agency
4 would need to do to move forward to address the
5 civil service reclassification.

6 On the salaries, in terms of the
7 actual changing the salaries, we were told that it
8 would have to be something that would have to be
9 addressed during bargaining, so it was -- it was
10 kind of a nonstarter in terms of officially
11 changing the min-max of the salary ranges, because
12 we were told that that would be something that
13 would be addressed during collective bargaining,
14 but we did indicate that we were seeking to
15 increase the hiring rate, and then that ended up
16 turning into a budget impact discussion, which was
17 later discussed with OMB, because we have to -- we
18 had to balance whether or not we were able to
19 afford changing the hire rate and then what that
20 potentially would end up being in terms of making
21 sure there was a new hire rate for the next level,
22 right?

23 So if you're an inspector, and you
24 have a supervisor that oversees the unit, the
25 expectation would be that the supervisor is not

1 S. Neill

2 60,000 and to increase the candidate pool by
3 changing the qualification and experience
4 requirements for inspectors.

5 Now, whether or not that -- the civil
6 service qualification item was identified as a
7 different phase, I can't recall.

8 Q. Phase 1 signals to me that it was the
9 first priority; is that correct? The first
10 priority that you had was to increase the hire
11 rate.

12 A. It was something that I could have
13 accomplished sooner. The other initiatives had
14 other action items that would have required a
15 longer time to accomplish.

16 Q. Looking down at the bottom of this
17 email, it says, "Current DOB hiring rate,
18 \$52,000," so it looks to me like the Department of
19 Buildings was seeking to raise inspector titles
20 \$8,000 for new hires; is that correct?

21 A. I don't know if the 52 was the
22 non-city min hiring rate, but we were actually
23 hiring a bit above the city incumbent rate at that
24 time, so I'm not quite sure what the notes
25 represent on this chart.

1 S. Neill

2 Q. And why were you hiring above the city
3 incumbent rates at the time?

4 A. Again, we were having difficulties
5 recruiting. We may have also had staff who were
6 performing the same job duties and functions that
7 may have -- that we -- we always try to -- since
8 I've been here to try to keep consistency of the
9 salaries of people performing the same job duties
10 and functions.

11 Q. So now I'm going to show you an
12 exhibit that has not been previously marked.

13 MS. EARDLEY: This document will be
14 marked Neill Exhibit 46.

15 (Neill Exhibit 46, Documents Bearing
16 Bates Nos. CHALMERS_FPI_LIT-00028559, marked
17 for identification.)

18 Q. I'm going to show you a couple of
19 pages of Neill Exhibit 46. You'll see that in the
20 bottom we've put this Bates number
21 CHALMERS_FPI_LIT-00028559.

22 I'm going to represent to you that it
23 is a PDF of an Excel file that plaintiffs received
24 from the City of New York counsel.

25 Ms. Neill, does this look familiar to

1 S. Neill

2 vacancies" --

3 A. Yeah.

4 Q. The document reads, "Increased
5 vacancies, all inspectors to 60K." What is this?

6 A. So the first box is that at this
7 particular point in time there were 67 budgeted
8 positions that would need to be adjusted
9 budgetarily up by the 533 number, and then to
10 increase the actives would have affected 166
11 active employees who were in the construction
12 titles by 863,000.

13 The next group are assuming that there
14 would be some increase, because if you were going
15 to increase the base inspector title, that the
16 subsequent levels would also have a range. When
17 you look at the salary schedules, I believe
18 there's like a 15 percent difference between each
19 title level, so I believe that's where the 15
20 percent change comes from.

21 Q. That's very helpful.

22 A. Yeah.

23 Q. The next document I'm going to show
24 you has been premarked Exhibit 15.

25 Do you recognize this document?

1 S. Neill

2 DOB team to increase inspector salaries to the max
3 salary?

4 MS. HADAGHIAN: Objection to form.

5 A. I would say -- I would say we had many
6 conversations internally about how to address
7 salary ranges as it pertained to their job
8 function and title, but again, these were many
9 working conversations that we had internally.

10 Ultimately we never implemented other
11 adjustments to these titles, other than increasing
12 the hiring rates. I actually -- I think that this
13 worksheet was in discussion of -- can you go down
14 to the next page?

15 Q. Sure.

16 A. Yeah, my -- without having some other
17 context to this, I believe it may have been to try
18 to differentiate which positions would potentially
19 be part of that senior inspector title as the
20 associate inspector, but I can't really recall for
21 sure. Could you go up further?

22 Q. Sure.

23 A. Yeah, again it would have been a
24 working document.

25 Q. Do you know if any of the inspector

1 S. Neill

2 Q. With regard to paying the hiring rate
3 above the minimum, was that within the Department
4 of Buildings' authority?

5 A. We made that decision in consultation
6 with OMB because of the fiscal impact that it was
7 going to have.

8 Q. And what factors did the DOB look at
9 in deciding to pay the hiring rate above the
10 minimum?

11 A. We looked at our -- the prevailing
12 rate within the construction industry, and we --
13 we made some incremental adjustments to see if
14 there was a change in the qualified recruitment
15 pool, so when we made the decision to make the
16 hiring rate 60, we did see that we were -- we were
17 able to attract qualified candidates, and then
18 when subsequent collective bargaining adjustments
19 occurred, we did make some adjustments to that
20 rate, but then at some point we didn't continue to
21 press the increasing the hiring rate, because we
22 felt that we were able to attract qualified
23 candidates, so there were working discussions
24 about increasing it more than what we had
25 increased it.